

AFTER RECORDING RETURN TO:

Foster Pepper PLLC
1111 Third Avenue, Suite 3000
Seattle, Washington 98101
Attention: Laura Karassik

RESTRICTIVE COVENANT, EASEMENT AND CIRCULATION AREA AGREEMENT

Grantor / Grantee: THE CITY OF SEATTLE,
a Washington municipal corporation

Grantee / Grantor: 225 ROY LLC,
a Washington limited liability company

Abbreviated Legal Description (City of Seattle Property):
Lots, 1, 7, and 8, Block 24, Mercer’s 2nd Add, V.2, P. 7

Abbreviated Legal Description (225 Roy LLC Property):
Ptn Lts 1-8, Blk 24, Mercer’s 2nd Add, Vol 2/7.

Full legal descriptions are in the recitals attached hereto.

Assessor’s Property Tax Parcel Account Number(s) (City of Seattle Property):
545780-0296-03
545780-0296-00

Assessor’s Property Tax Parcel Account Number(s) (225 Roy LLC):
545780-0260-05
545780-0260-08
545780-0280-01

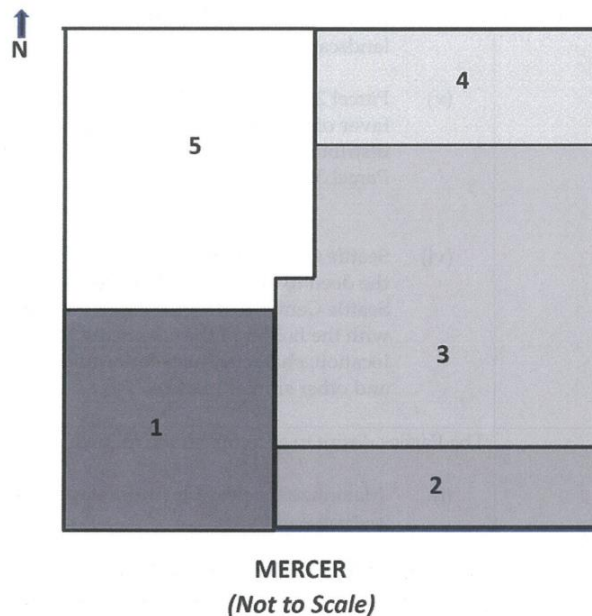
RELATED DOCUMENTS: None.

RESTRICTIVE COVENANT, EASEMENT, AND CIRCULATION AREA AGREEMENT

THIS RESTRICTIVE COVENANT, EASEMENT, AND CIRCULATION AREA AGREEMENT (“Agreement”) is made as of _____, 2017 (the “Effective Date”), by and between THE CITY OF SEATTLE, a Washington municipal corporation (the “City”) and 225 ROY LLC, a Washington limited liability company and its successors and assigns (“225 Roy”).

RECITALS

- A. The “K Block” consists of five parcels, as depicted below:



B. The City is the fee owner of Parcels 1 and 2 in the K Block (the “City Property”). Parcel 1 is legally defined as Lots 7 and 8, Block 24, Mercer’s 2nd Addition to North Seattle, as recorded in Volume 2 of Plats, page 7, Records of King County WA; except the east 28 feet thereof; and less the north 10 feet of said lot 7 (“Parcel 1”). Parcel 2 is legally described as the South 38.6 feet of Lot 1, together with the South 38.6 feet of the East 28 feet of Lot 8, all in Block 24, Mercer’s 2nd Addition to North Seattle, as recorded in Volume 2 of Plats, page 7, Records of King County, WA, under Recording No. 20001219000321, in King County, Washington, assessor tax parcel 545780-0265 (“Parcel 2”).

C. 225 Roy is the fee owner of Parcels 3, 4, and 5 of the K Block (the “225 Property”). Parcel 3 of the K Block is legally described as Lots 1 through 4 inclusive and the east 28 feet of lots 7 and 8 in block 24 of Mercer’s 2nd addition to the North Seattle, according to plat recorded in Volume 2 of plats at page 7, in King County, Washington; except the south 38.6 feet of lot 1; and except the south 38.6 feet of the east 28 feet of lot 8, assessor tax parcel 545780-0260 (“Parcel 3”).

Parcels 4 and 5 and legally described as Lots 5 and 6 and the north 10 feet, less the east 28 feet, of lot 7 in block 24 of Mercer’s 2nd Addition to North Seattle, according to plat recorded in Volume 2 of Plats at page 7, in King County Washington (“Parcel 4” and “Parcel 5”).

D. At the time of its conveyance to the City, Parcel 2 was encumbered by an existing perpetual utility easement and an access easement through the landscaping and over, under and upon Parcel 2 in favor of Parcel 3. The easements are set forth in a Quit Claim Deed under Recording No. 2001219000321 (such easements are referred to herein as the “Existing Easements”).

E. 225 Roy intends to construct a residential project with ground floor retail uses on Parcels 3 through 5, and in the future the City intends to cause the City Property to be redeveloped for housing, including low-income housing on Parcel 1 adjacent to public open space on Parcel 2 as described herein. 225 Roy and the City have executed a Term Sheet to coordinate the development of K Block to their mutual benefit and 225 Roy has initiated its development under Seattle Department of Construction and Inspections Project Number 3025946.

F. As part of their coordination, the City and 225 Roy have agreed on the location of and terms and conditions for shared and public use of certain circulation elements to be constructed on the K Block. Specifically, the parties have agreed to a revised location for the existing access easement over Parcel 2 and benefitting Parcel 3 and executed an Access Easement Agreement executed by and between the City and 225 Roy on June 20, 2017. The parties also intend to cause a lot boundary adjustment (“LBA”) to be recorded that will allow 225 Roy to use the northern 10 feet of current Parcel 2 for weather protection overhangs and open space uses as described below (the “225 Roy No-Build Area B”).

G. 225 Roy and City desire to execute this Agreement to create a pedestrian circulation and seating area and to comply with the Seattle Building Code on K Block to the parties’ mutual benefit.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

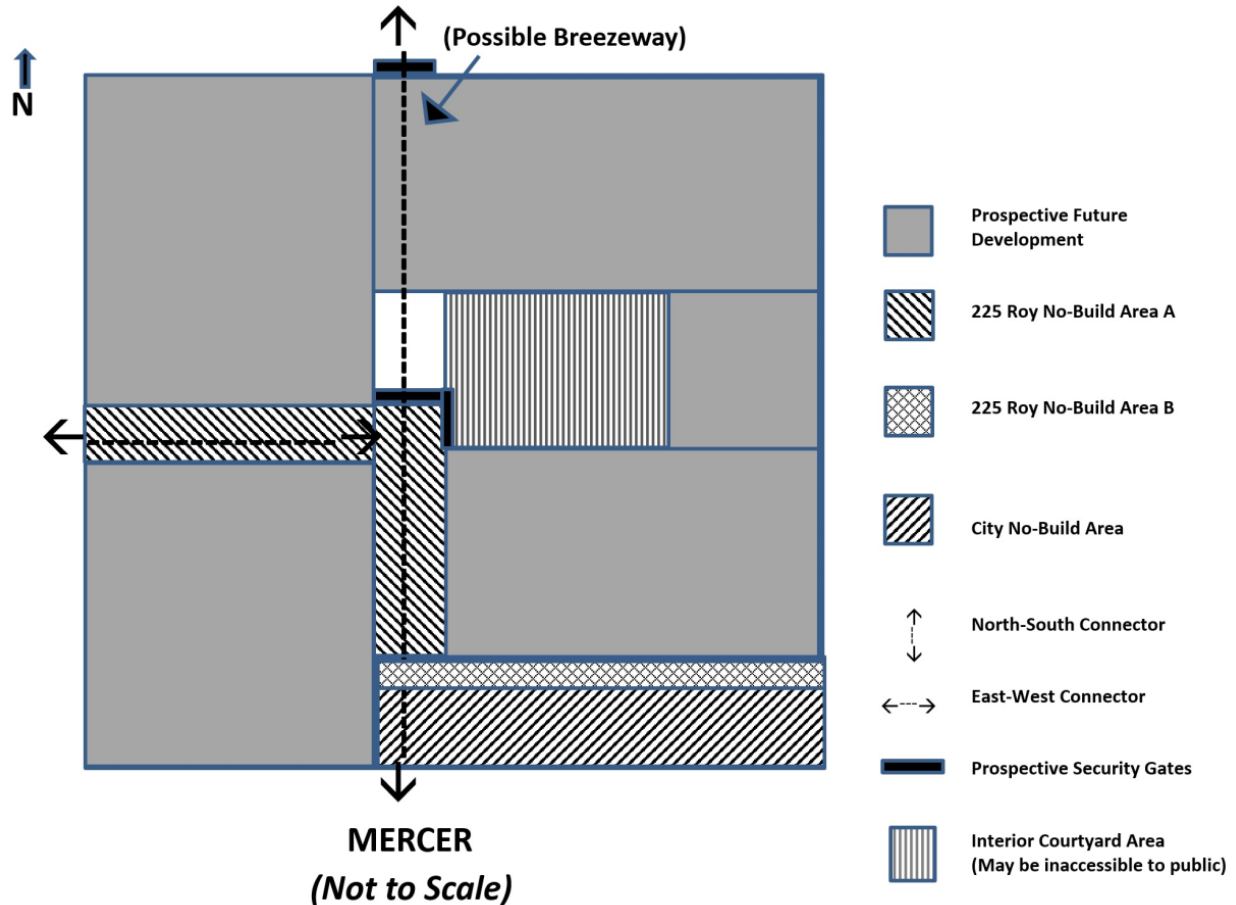
1. 225 Roy No-Build Area A. 225 Roy hereby covenants and agrees to set back the above-grade portion of any structure on the 225 Roy Property twenty (20) feet from the northern boundary line of Parcel 1 and twenty-five (25) feet from the eastern boundary line of Parcel 1 as generally depicted below (the “225 Roy No-Build Area A”). The foregoing covenant does not prohibit 225 Roy from constructing within the 225 Roy No-Build Area any underground improvements, at-grade hardscaping, at-grade landscaping, or overhead weather protection as described herein.

2. 225 Roy No-Build Area B. 225 Roy hereby covenants and agrees to use the 225 Roy No-Build Area B solely for the construction, operation, maintenance, repair and reconstruction of weather protection building overhangs and public open space improvements, except that if one or more food service establishments are operating at ground level in 225 Roy’s development adjacent

No-Build Area B, then 225 Roy may utilize space within the No-Build Area B adjacent to such establishments for café seating during business hours in accordance with applicable laws.

3. City No-Build Area. City hereby covenants and agrees that the entirety of Parcel 2 shall be subject to a No-Build covenant (the “City No-Build Area”), such that the City may not construct any improvements within the City No-Build Area, and except for uses provided for in paragraph 2 above, the entirety of Parcel 2 shall remain as perpetual public open space. The foregoing covenant does not prohibit at-grade hardscaping or landscaping within the City No-Build Area that 225 Roy will construct and maintain on Parcel 2 in conjunction with its development of Parcels 3, 4, and 5 pursuant to Section 6.a of this Agreement and consistent with the Existing Easements and the Access Agreement. The foregoing covenant also does not prohibit below-grade improvements necessary for the above-grade improvement (*e.g.*, the pump room for a fountain). Notwithstanding the foregoing, the City may use the square footage of Parcel 2 to satisfy any open space, amenity area, floor area ratio calculation, and other code requirement for the future development of Parcel 1.

4. Purpose of the No-Build Area. Taken together, the City No-Build Area and the 225 Roy No-Build Areas allow 225 Roy to construct a North-South through-block connection for pedestrian access between Mercer and Roy streets (the “North-South Connector”), a pedestrian access and setback path from 2nd Avenue N. running east to the mid-block between the two structures on Parcel 1 and Parcel 5 (the “East-West Connector”), as well as a seating area, as authorized in Section 2 of this Agreement, which is generally depicted in the diagram below and included for illustrative purposes only:



The No-Build area easements and covenants granted in this Agreement are also executed pursuant to Seattle Building Code Section 104.5 to address 2015 Seattle Building Code Section 705, including Table 705.8 (maximum area of exterior wall openings based on fire separation distance and degree of opening protection), as described below:

- a. 225 Roy desires to build a structure on Parcel 3 with unlimited openings on the structure’s southern facade. For avoidance of doubt, such unlimited openings would be located on the southern property line of Parcel 3 before any adjustment to the property line pursuant to the LBA. Accordingly, after the LBA, the unlimited openings will be 10 feet from the southern property line of Parcel 3.
- b. The City desires to build to the northern and eastern property line on Parcel 1 and to have unlimited openings as allowed in Table 705.8 in the Seattle Building Code. To allow for these openings, 225 Roy grants the City a no build easement and covenants that it will not build in the north-south connector and east-west connector as identified in Sections 1 and 4 of this Agreement.

- c. 225 Roy desires the ability to have unlimited openings on the western wall on Parcel 3. 225 Roy also desires the ability to have unlimited openings on the southern wall on Parcel 5. Both walls will be setback from the property line as depicted in the image above.

For clarity and to demonstrate compliance with Table 705.8 of the Seattle Building Code, the north-south width of parcel 2 will be greater than 25 feet and less than 30 feet after the LBA. The width of the north-south connector is twenty-five (25) feet, and the width of the east-west connector is twenty (20) feet. 225 Roy’s project under Department of Construction and Inspections Project Number 3025946 will be sprinklered.

5. Nature of No-Build Covenants and Easements. Provided that 225 Roy satisfies Section 6 (Condition) below, the no-build covenants and easements set forth in Sections 1 through 4 shall be perpetual, non-extinguishable, located over and upon Parcels 2, 3, and 5 and shall run with the land, burdening Parcels 2, 3, and 5 for the mutual benefit of the parties. The No-Build covenants and easements cannot be removed by any party as long as they are needed to satisfy the requirements of the Seattle Building Code as described above.

6. Condition. This Agreement is conditioned upon 225 Roy obtaining a Master Use Permit within three years of the Effective Date for a structure on Parcel 3 that includes street-level retail or other uses that are reasonably calculated to activate pedestrian uses in Parcel 2 and commencing construction of such structure within 3 years of the Master Use Permit issuance. This Agreement is further conditioned upon 225 Roy causing the entirety of Parcel 2 to be improved as described in this Agreement. If there is a failure of this condition and ownership of No-Build Area B reverts to the City, 225 Roy agrees to cooperate with the City in restoring the boundaries of Parcel 2 to their configuration prior to the LBA. The requirements of this Section 6 shall survive the termination of this Agreement.

7. Circulation Area Agreement. The “Circulation Area” is comprised of the North-South Connector, the East-West Connector and the 225 Roy No-Build Area B, as generally depicted in the diagram set forth in Section 4 above. The City and 225 Roy agree to the following terms that govern the Circulation Area.

- a. Design / Construction. 225 Roy will design and construct the Circulation Area together with improvements to those portions of Parcel 2 not within the Circulation Area (“Parcel 2 Improvements”). The design of the Circulation Area and Parcel 2 Improvements will be incorporated in 225 Roy’s design for Parcels, 3, 4, and 5. The design shall allow for pedestrian access between Parcel 2 and the City’s future development on Parcel 1. The southern entrance on Mercer Street to the North-South Connector and the western entrance on 2nd Avenue North to the East-West Connector will appear to be public access. The City in its non-regulatory capacity will review 225 Roy’s proposed design for the Circulation Area and Parcel 2 Improvements, and the Seattle Center Director (the “Director”) will have the final approval over the proposed improvements within the Circulation Area and the Parcel 2 Improvements. The Director will approve the proposed improvements if they

are consistent with (1) the Circulation Area design’s compliance with the Seattle Center Master Plan Design Guidelines, (2) advisory input from the Design Review Board (in lieu of any review / approval by the Seattle Design Commission), and (3) applicable development standards. The final approved design for the Circulation Area and Parcel 2 Improvements will be included in the 225 Roy Design Review packet for the development of Parcels 3, 4, and 5. A representative from the City who is familiar with the Term Sheet shall be entitled to participate in all design review board meetings. The intent of the design for the Circulation Area is to accommodate pedestrian access and circulation for the benefit of both parties. Additionally, the intent of the design for Parcel 2 improvements is to accommodate active and engaging open space, which shall remain as perpetual public open space as described herein.

- b. Construction, Maintenance, and Funding. To the extent located on the City Property, the City grants 225 Roy the right for staging and sitework on Parcel 2 for the redevelopment of Parcels 2, 3, 4, and 5, and the right to construct and maintain all improvements in the Circulation Area and the Parcel 2 Improvements subject to the Seattle Center Director’s reasonable prior approval of construction scheduling, location, fencing and other activities occurring on the City Property. 225 Roy covenants that any and all improvements it causes to be constructed within the Circulation Area and Parcel 2 pursuant to this Agreement shall be (a) installed, modified or altered only in accordance with plans and specifications approved by City as provided in this Agreement, (b) maintained in good condition, and (c) constructed, repaired and replaced in a good and workmanlike manner and in compliance with all applicable laws, regulations and rules (including the Seattle Center Construction Guidelines generally applicable to all Seattle Center occupants). 225 Roy shall be responsible for all costs associated with the installation, maintenance, repair, modification and replacement of all improvements installed in the Circulation Area and the Parcel 2 Improvements. 225 Roy shall also be responsible for the environmental remediation on Parcel 2 to a depth of no more than 10 feet. All improvements constructed on Parcel 2 shall become the City’s property immediately upon installation and at City’s request, 225 Roy will convey such improvements to the City by special warranty deed and/or by bill of sale. For the purposes of this section, “improvements” does not include any art pieces, such as sculptures, that 225 Roy may install on Parcel 2. If 225 Roy defaults on any of its obligations under this paragraph then, following five (5) business days’ notice and an opportunity to cure, in addition to any other remedies available to the City at law or in equity for such default, the City may cause any necessary repairs, maintenance or cleaning to be performed and 225 Roy shall pay the full costs thereof, plus a reasonable administrative fee.

- c. Control / Security. 225 Roy retains the right to enclose and secure the interior courtyard (located on Parcels 3, 4, and 5) and the portion of the North-South Connector not included in the Circulation Area during reasonable hours (e.g., dusk to dawn) or otherwise for safety reasons, provided that the Circulation Area shall be unobstructed at all times except in the case of emergency or during necessary repairs. 225 Roy's final approved design will clearly delineate the Circulation Area. 225 Roy will be responsible for the control and security of all portions of the Circulation Area located on the 225 Property inclusive of 225 Roy No-Build Area B.

8. Compliance with Law. 225 Roy, in its use of the rights granted hereunder, shall at all times comply with applicable laws and regulations and shall obtain any permits, licenses or approvals necessary for the conduct of its activities on Parcel 2.

9. No Merger. It is the intention of City and 225 Roy that the rights granted herein shall not extinguish or terminate by operation of the doctrine of merger or otherwise by reason of existing or future common ownership of the Property.

10. No Dedication to the Public. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Circulation Area to the general public or for the general public or for any public uses whatsoever other than those specifically granted herein, it being the intention of parties that the rights shall be strictly limited to and for the purposes herein expressed.

11. Assignment; Binding Effect. The rights hereby granted and the conditions herein contained shall be covenants running with the land and shall inure to the benefit of and be binding upon City and 225 Roy, and their successors and assigns, including any subsequent owners of the K Block.

12. Severability. The provisions of this Agreement shall be independent and severable. The unenforceability or invalidity of any one provision shall not affect the enforceability of any other provision.

13. Choice of Law; Venue. This Agreement shall be construed under and governed by the laws of the State of Washington. Venue and jurisdiction of any action arising out of or related to this Agreement shall be in King County Superior Court.

14. Entire Agreement. This Agreement constitutes the entire agreement with respect to any matter covered or mentioned in this Agreement, and no prior reservations, agreements or understandings, promises or representations, oral or otherwise, pertaining to any such matters shall be effective for any purpose whatsoever.

15. Headings. The headings in this Agreement are for convenience only, do not in any manner affect, limit or amplify the provisions hereof and the words contained in them shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement or any terms or provisions hereof.

16. Amendment. This Agreement shall not be modified except by written agreement of the owners of Parcels 2, 3, and 5 duly recorded with the real property records of King County, Washington.

17. Notices. All notices required to be given hereunder shall be given in writing and shall be deemed delivered on the date of hand delivery of the notice or the date that is three days after mailing of the notice by certified or registered mail, return receipt, postage prepaid, to the parties at the addresses set forth below:

If to City: Seattle Center Director
305 Harrison Street
Seattle, WA 98109

If to 225 Roy: 225 Roy LLC
c/o Washington Holdings, LLC
600 University Street, Suite 2820
Seattle, Washington 98101
Attention: President and CEO

The parties, by notice given, may designate any further or different address to which subsequent notices are to be sent.

18. Indemnity. 225 Roy does hereby release and shall indemnify and hold the City harmless for, from and against all losses, liabilities, claims (including mechanics' or materialmen's liens), costs (including attorneys' fees), actions or damages of any sort or nature whatsoever incurred as a result of or arising out of 225 Roy's construction, repair, alteration or maintenance of the Circulation Area or that of its servants, agents, employees, contractors, licensees and invitees. If any action is brought against the City by any employee of 225 Roy, the indemnification obligation of 225 Roy set forth in this Paragraph shall not be limited by a limit on the amount or type of damages, compensation or benefits payable by or for 225 Roy under RCW Title 51, the Industrial Insurance Act, or any other employee benefit act. 225 Roy waives its immunity under RCW Title 51 and acknowledges that this indemnification has been negotiated by the parties.

19. Insurance. While this Agreement is in effect, 225 Roy shall, at its own cost and expense, obtain and maintain and shall ensure that each of its contractors maintain throughout the course of any construction activities undertaken on the Circulation Area commercial general liability insurance, written on an insurance industry standard occurrence form (CG0001) or equivalent, including all the usual coverages known as Premises/Operations Liability, Products/Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractors' Liability, and Stop Gap, and providing property damage and bodily injury liability coverage with limits not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate, for any damage, loss or injury resulting from 225 Roy's construction, repair, alteration or maintenance of the Circulation Area or the activities of its licensees, invitees and contractors thereon. 225 Roy's insurance policies shall be primary to all other insurance of the City, shall be

rated A-:VII or higher in the A.M. Best’s Key Rating Guide, shall be issued by a company licensed to do business in the State of Washington, and shall be subject to approval by The City’s Risk Manager as to company, form and coverage. No insurance policy required under this Circulation Agreement shall be reduced or canceled without forty-five (45) days prior written notice to The City, and each shall contain a “separation of insureds” or “severability” clause that applies coverage separately to each insured and additional insured.

The City shall be named as an additional insured on insurance policies required hereunder and shall receive as evidence of insurance a copy of each of the policy’s declaration pages, showing the insuring company, effective dates, limits of liability, schedule of forms and endorsements, and the additional insured endorsement (ISO CG 20 26 or, for contractors, ISO CG 20 10 11 85 or CG 20 37 10 01). Such declaration pages shall be due on the date of execution of this Circulation Agreement with respect to the policy required of 225 Roy, and prior to commencement of any construction activities with respect to those policies required of 225 Roy’s contractors. The City shall receive a renewal certificate or a certificate for a new policy meeting the foregoing requirements within thirty (30) days after the policy expiration date identified in the then last insurance certificate provided to The City. The Products and Completed Operations additional insured status for the City shall remain in effect for not less than three (3) years following the physical completion date of any construction work.

Insurance coverage and limits specified herein are minimum coverage and limits of liability requirements only; they shall not be construed to limit the liability of 225 Roy for any claim that may arise under this Circulation Agreement.

20. Liens; Taxes. 225 Roy covenants and agrees to promptly pay all sums legally due and payable by it on account of any work performed in, over or upon the Circulation Area; to keep The City’s interest in the City Property free and clear of all liens arising out of such work; and to pay or cause to be paid all taxes that may be due and arising out of the use of the No-Build Area by 225 Roy or any person authorized to use the same by 225 Roy.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the date first set forth above.

CITY:

CITY OF SEATTLE, a Washington municipal corporation

By: _____

Name: _____

Its: _____

Att A – Restrictive Covenant, Easement, and Circulation
V1

225 ROY:

225 ROY LLC, a Washington limited liability
company

By: _____

Name: _____

Title: _____

Att A – Restrictive Covenant, Easement, and Circulation
V1

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (s)he signed this instrument, on oath stated that (s)he was authorized to execute the instrument, and acknowledged it as the _____ of the City of Seattle, a Washington municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____

(Print Name)

Notary Public in and for the State of Washington

Commission Expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____, of the 225 Roy LLC, a Washington limited liability company, to be the free and voluntary act of such parties for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____

(Print Name)

Notary Public in and for the State of Washington

Commission Expires: _____